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February 19, 2009

**BY HAND DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, D.C. 20002

Re: Tonga Communications Corporation  
Opposition to AT&T Petition for Settlements Stop Payment Order  
On the U.S.-Tonga Route  
IB Docket No. 09-10

Attn: John Giusti  
Chief, International Bureau

Dear Ms. Dortch:

Tonga Communications Corporation ("TCC"), by its attorneys, hereby requests confidential treatment, pursuant to Sections 0.457 and 0.459 of the Commission's rules,<sup>1</sup> for the redacted portions of its Opposition to the Petition of AT&T Inc. ("AT&T") in the proceeding captioned above. The redacted portions of TCC's Opposition contain details of termination rates and other terms and conditions agreed between TCC and AT&T as part of their commercial agreement for the termination of telephony traffic on the U.S.-Tonga route. In addition, the redacted portions contain information regarding the rates charged by carriers in other South Pacific countries to terminate international telephony traffic. The Commission has previously recognized the confidential commercial nature of this type of information and that parties to such agreements should be allowed to submit such information to the Commission on a confidential

<sup>1</sup> 47 C.F.R. §§ 0.457, 0.459.

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basis.<sup>2</sup> This information is not ordinarily disclosed to unrelated third parties because disclosure of the information could have adverse competitive consequences for TCC. Accordingly, this information qualifies for confidential treatment under Exemption 4 of the Freedom of Information Act ("FOIA").<sup>3</sup>

In accordance with the requirements of Section 0.459(b) and in support of this request for confidential treatment, TCC provides the following information:

*1. Identification of specific information for which confidential treatment is sought (Section 0.459(b)(1))*

TCC seeks confidential treatment for the redacted portions of its Opposition to the Petition of AT&T in IB Docket No.09-10. The information in the redacted portions comprises commercially sensitive business and financial information that falls within Exemption 4 of the FOIA.

*2. Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission (Section 0.459(b)(2))*

TCC is submitting the information for which confidential treatment is requested as part of its Opposition to the Petition of AT&T in IB Docket No.09-10.

*3. Explanation of the decree to which the information is commercial or financial, or contains a trade secret or is privileged (Section 0.459(b)(3))*

The redacted portions of TCC's Opposition contain details of termination rates and other terms and conditions agreed between TCC and AT&T as part of their commercial agreement for the termination of telephony traffic on the U.S.-Tonga route. In addition, the redacted portions contain information regarding the rates charged by carriers in other South Pacific countries to terminate international telephony traffic. As noted previously, the Commission has previously recognized the confidential commercial nature of this type of information.

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<sup>2</sup> See *International Settlements Policy Reform*, First Report and Order, 19 FCC Rcd 5709, n.125 (2004) ("ISP Reform Order").

<sup>3</sup> See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d). Exemption 4 allows parties to withhold from public information "trade secrets and commercial or financial information obtained from any person and privileged or confidential-categories of materials not routinely available for public inspection." Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will have either of the following effects: (1) impairment of the government's ability to obtain necessary information in the future; or (2) causation of substantial harm to the competitive position of the person from whom the information was obtained.

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4. *Explanation of the degree to which the information concerns a service that is subject to competition (Section 0.459(b)(4))*

As TCC discusses in Section II of its Opposition, the Tonga Minister responsible for Communications has issued a telecommunications license to Digicel. Digicel operates a GSM cellular network to provide international and domestic telecommunications services, Internet access, and broadcast services. As such, there is competition in Tonga for the provision and termination of international telecommunications services. The Commission has previously recognized that there is competition in the provision and termination of international telecommunications services in the U.S.<sup>4</sup>

5. *Explanation of how disclosure of the information could result in substantial competitive harm (Section 0.459(b)(5))*

Release of the information for which TCC requests confidentiality could be used by the carriers who are terminating (or are interesting in terminating) TCC's traffic to develop negotiating strategies to enhance their competitive position. This could hinder TCC's ability to negotiate the best possible rates for terminating traffic in the U.S. and the South Pacific countries noted in TCC's Opposition.

6. *Identification of any measures taken to prevent unauthorized disclosure (Section 0.459(b)(6))*

The commercial agreement between AT&T and TCC for traffic termination is marked confidential and proprietary and is maintained by the parties as such. Similarly, the rates charged by carriers to terminate telephony traffic in the South Pacific countries noted in TCC's Opposition are not ordinarily released to third parties or otherwise made available publicly in the normal course of business.

7. *Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties (Section 0.459(b)(7))*

To the best of TCC's knowledge and belief, details regarding the termination rates and other terms and conditions agreed between TCC and AT&T have not been previously made public, except in connection with the subject proceeding. To the best of TCC's knowledge and belief, the rates charged by carriers in the South Pacific countries noted in TCC's Opposition to terminate international telephony traffic also have not been made available to the public.

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<sup>4</sup> ISP Reform Order at ¶ 2.

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8. *Justification of period during which the submitting party asserts that the material should not be available for public disclosure (Section 0.459(b)(8))*

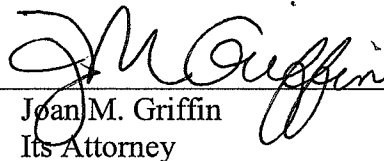
TCC respectfully requests that the Commission withhold the information from public inspection indefinitely.

As demonstrated above, the information for which TCC seeks confidential treatment is entitled to exemption from disclosure under both FOIA and the Commission's rules. If any person or entity requests disclosure of the enclosed response, please notify the undersigned counsel for TCC immediately in order to permit it to oppose such request or take such other action to safeguard its interests as it deems necessary. Please direct any questions as to this matter, including the request for confidential treatment, to the undersigned.

Respectfully submitted,

**Tonga Communications Corporation**

By:

  
Joan M. Griffin  
Its Attorney

Enclosure

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>  <b>Petition of AT&amp;T Inc.</b> <b>For Settlements Stop Payment Order</b> <b>on the U.S.-Tonga Route</b>	) ) ) ) )	<b>IB Docket No. 09-10</b>
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**OPPOSITION OF TONGA COMMUNICATIONS CORPORATION**

**I. Introduction and Summary**

Tonga Communications Corporation (“TCC”), by its attorneys, hereby opposes the Petition of AT&T Inc. (“AT&T”) in the proceeding captioned above.<sup>1</sup> In its Petition, AT&T requests that the Commission issue an order stopping U.S. settlement payments to TCC until all circuits have been restored on the U.S.-Tonga route. AT&T contends that TCC has blocked AT&T’s circuits because of AT&T’s refusal to accede to TCC’s requested settlement rate increase and that TCC’s behavior constitutes “whipsawing.”

The Commission must deny AT&T’s Petition. As discussed below, TCC’s actions do not constitute “whipsawing” and are not otherwise anticompetitive. TCC was required by the laws of Tonga to increase its termination rates to AT&T, and TCC blocked AT&T’s circuits only when it became clear that AT&T would not consent to the increase. By insisting that the Commission order U.S. carriers to stop settlement payments to TCC until TCC backs off its

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<sup>1</sup> By Order dated February 9, 2009, the Chief, Policy Division, International Bureau, extended the due date for comments on or oppositions to AT&T’s Petition to February 19, 2009. TCC notes that AT&T did not serve a copy of its Petition on TCC or otherwise advise TCC of its intent to raise its objections with the FCC, and that TCC became aware of AT&T’s Petition only when advised of it by a third party.

demands and restores AT&T's circuits, AT&T is demanding that the FCC penalize TCC for refusing to disobey the dictates of Tonga law.

Contrary to AT&T's claims, Tonga's government-mandated termination rate is not unreasonable considering TCC's costs and the rate AT&T charges TCC to terminate TCC's traffic in the U.S. If despite these facts, the Commission objects to Tonga's termination rate, then the FCC must raise these concerns directly with the Government of Tonga or through the appropriate multilateral dispute resolution forums. The Commission cannot lawfully issue the stop payment order that AT&T requests, since the FCC does not have authority under the Communications Act of 1934 to issue an order regarding the rates charged by a foreign telecommunications carrier for providing termination services in a foreign country when such order creates a direct conflict with the duly enacted laws and regulations of the foreign country.

## II. Tonga Communications Corporation

TCC is a telecommunications carrier providing voice, data, Internet, and cellular services in the Kingdom of Tonga. TCC was established in 2000 as the successor in interest to the Tonga Telecommunications Commission (for domestic services) and Cable & Wireless Tonga (for international services). TCC is a public enterprise that is wholly-owned by the Government of Tonga and reports to the Ministry of Public Enterprises. However, since 2006, there has been only one (1) minister or government official among the seven (7) directors on the TCC Board of Directors. As of January 2009, no minister or government official sits on TCC's Board.

Pursuant to the Communications Act 2000, TCC's provision of service is regulated by the Minister responsible for Communications ("Communications Minister"). TCC provides its services pursuant to an individual telecommunications license issued by the Communications Minister in accordance with Section 20 of the Communications Act 2000. Digicel is also

licensed to provide telecommunications service in Tonga. Digicel operates a GSM cellular network to provide international and domestic telecommunications services, Internet access, and broadcast services.

The Kingdom of Tonga comprises some 170 small islands, with a combined land area of 747 sq. km. and sea area of 700,000 sq. km. The islands are located in the south Pacific Ocean, south of Samoa, about one-third of the way from New Zealand to Hawaii. Tonga's population of about 99,500 is located across 36 islands, with some 65 percent of the populace residing on the main island of Tongatapu. Many Tongans live in and around the capital of Tonga, Nuku'alofa.

III. Since TCC Raised AT&T's Termination Rate as Required By Tonga Law and Blocked AT&T's Circuits Because of AT&T's Refusal to Comply With Tonga Law, TCC's Actions Are Neither "Whipsawing" Nor Anticompetitive.

In arguing that TCC's increase in the inbound termination rate to Tonga constitutes "whipsawing," AT&T disregards the fundamental facts of this case. As AT&T admits in its Petition, in August 2008, the Communications Minister – TCC's regulator – issued a ruling that raised the minimum termination rate for all international telephone traffic terminating in Tonga to US\$0.30/minute effective no later than September 1, 2008.<sup>2</sup> The order by its terms applies to all inbound telephone traffic -- not just traffic originating in the U.S. -- whether the traffic is terminated by TCC or Digicel.

Under these circumstances, TCC's attempt to secure AT&T's commitment to the government-mandated termination rate can hardly be considered "whipsawing" or other anticompetitive behavior. At the time the order was issued, TCC had not sought a rate increase from AT&T or any other U.S. carrier in over a year, and there was no ongoing dispute between

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<sup>2</sup> In its Petition, AT&T does not challenge the order establishing US\$0.30/minute as the minimum inbound terminating rate, so AT&T apparently concedes that this order is duly enacted and binding law in Tonga.

TCC and AT&T or any other U.S. carrier that the Communications Minister was attempting to resolve.<sup>3</sup> Unlike the situations cited by AT&T involving the Philippines carriers or Telintar,<sup>4</sup> TCC was not attempting to play AT&T against Verizon or another U.S. carrier in an accounting rate negotiation in order to secure a higher termination rate. Indeed, TCC was not even in commercial negotiations with AT&T over the level of the termination rate. Rather, in asking AT&T to pay US\$0.30/minute for terminating AT&T's telephone traffic in Tonga, TCC was merely attempting to comply with the rules and regulations imposed on it by its regulator, the Communications Minister. TCC is required by the terms of its telecommunications license to comply with the Communications Minister's rules and regulations<sup>5</sup> (just as AT&T is required to comply with the Commission's rules and regulations as an FCC licensee) and TCC can lose its license or suffer sanctions if it fails to comply. TCC does not have the authority or ability to ignore the mandated termination rate or change it.

For the same reasons, TCC's blockage of AT&T's circuits to Tonga does not constitute anticompetitive behavior. TCC did not attempt to negotiate higher termination rates with AT&T and then block AT&T's circuits when AT&T would not comply with TCC's demands. Rather, TCC blocked AT&T's circuits because TCC had no reasonable assurance of payment (let alone payment at the legally mandated termination rate) in light of AT&T's express refusal to comply with the Communications Minister's order. Furthermore, TCC was concerned that were it to continue terminating AT&T's traffic at the previously agreed termination rate in violation of Tonga law, the result would be to create a mechanism for refile that would undercut the

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<sup>3</sup> The pertinent facts of TCC's Opposition are supported by the attached Declaration of Timote Katoanga, Managing Director of TCC.

<sup>4</sup> Petition at 5-7.

<sup>5</sup> Section 34 of TCC's license provides that "the Licensee shall comply with the provisions of the Communications Act 2000 and other laws of the Kingdom and with any subordinate legislation and regulations made thereunder."



termination rate mandated by the Communications Minister and agreed by all other foreign carriers terminating traffic in Tonga.<sup>6</sup> Under these circumstances, TCC's refusal to continue to terminate calls for AT&T was both appropriate and reasonable.

In any event, at the point at which TCC blocked AT&T's circuits, TCC's agreement with AT&T for the termination of traffic had already expired.<sup>7</sup> We are aware of no FCC policies or precedents which require a foreign telecommunications carrier to terminate traffic from a U.S. carrier when there is no agreement between the two carriers for the termination of traffic or specifying a rate to be paid for terminating such traffic.

Simply put, AT&T is wrong in saying that "TCC is abusing its control of the foreign end of a U.S. international route to disrupt circuits in response to AT&T's refusal to pay unreasonably high settlement rates."<sup>8</sup> Rather, the Communications Minister – not TCC – has mandated a termination rate increase, and TCC by law must comply with this mandate. As such, the Commission cannot reasonably presume that TCC's actions constitute harm to the public interest as AT&T demands in its Petition.<sup>9</sup>

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<sup>6</sup> Only AT&T and Verizon, the two U.S. carriers with whom TCC has maintained direct relations, have voiced any objections to the new rate.

<sup>7</sup> AT&T insists that TCC was obligated by the terms of its agreement with AT&T to continue providing termination service to AT&T at US\$0.09/minute until new rates were agreed. Petition at 4. Once again, AT&T is ignoring the fact that the law in Tonga regarding inbound termination rates had changed. The Communications Minister's order regarding inbound termination rates overrides the agreement provisions cited by AT&T as a matter of law. *See, e.g., Cinquegrano v. T.A. Clarke Motors, Inc.*, 69 R.I. 28, 30 A.2s 859 (1943); *In re Kramer & Uchitelle, Inc.*, 288 N.Y. 467, 43 N.E.2d 493 (1942). By analogy, the FCC has recognized that it has the authority to issue orders that effectively modify pre-existing contracts between U.S. and foreign carriers. *See, e.g., International Settlement Rates, Report and Order*, 12 FCC Rcd 19806, ¶ 285(1997) ("Benchmarks Order").

<sup>8</sup> Petition at 9.

<sup>9</sup> Petition at 9.

IV. The Termination Rate Mandated By the Communications Minister Is Not Unreasonable Considering TCC's Costs and the Termination Rate AT&T Charges TCC to Terminate TCC's Traffic in the U.S.

The inbound termination rate set by the Communications Minister – US\$0.30/minute -- is not “unreasonably high” as AT&T repeatedly insists.<sup>10</sup> Tonga’s inbound termination rate of US\$0.30/minute is among the lowest rates charged by Pacific island countries.<sup>11</sup> The fact that Pacific island countries charge termination rates that are higher than the FCC’s benchmark rates does not necessarily mean that these rates are not cost-based. Carriers in developing countries such as Tonga have higher costs due to many factors, including adverse terrain and climatic conditions, smaller and less dense populations, less efficient and lower density network configurations, higher equipment purchase, installation and maintenance costs, and fewer economies of scale/scope. As others have recognized, the costs that a carrier incurs in a developing country to terminate international traffic do not necessarily track the costs incurred by carriers in the U.S. and other large, more developed countries.<sup>12</sup>

Furthermore, the rate that the Communications Minister has mandated for inbound termination is not significantly higher than the termination rate that AT&T is charging TCC for termination in certain parts of the U.S. Per TCC’s most recent correspondent agreement with AT&T, AT&T charges TCC [REDACTED] to terminate TCC’s traffic in “high cost NPAs” that include [REDACTED]

<sup>10</sup> Petition at 1, 2, 4, 9.

<sup>11</sup> For example, the inbound termination rates in Western Samoa is [REDACTED]; Niue, [REDACTED]; Papa New Guinea, [REDACTED]; and Wallis & Futuna, [REDACTED].

<sup>12</sup> See Paula Uimonen, United Nations Research Institute for Social Development, “The Internet as a Tool for Social Development,” *available at* [www.isoc.org/inet97/proceedings/G4/G4\\_1.htm](http://www.isoc.org/inet97/proceedings/G4/G4_1.htm) (visited Feb. 16, 2009).

██████. This termination rate is higher than the FCC's benchmark rate (\$0.19/minute) for terminating international traffic in lower middle income countries such as Tonga.<sup>13</sup> The fact that AT&T charges TCC an above-benchmark termination rate in the United States which is only modestly lower than the US\$.30 minute rate adopted by the Tonga Government, even though Tonga is clearly a higher-cost environment than the United States, is evidence that the US\$.30/minute rate is reasonable.<sup>14</sup>

V. The Commission Lacks Authority to Order U.S. Carriers to Stop Settlement Payments on the U.S.-Tonga Route and Must Raise Its Concerns About Tonga's Termination Rate Directly With the Tonga Government.

Despite AT&T's suggestions to the contrary, the Commission does not have authority under the Communications Act of 1934 to require U.S. carriers to stop settlement payments to TCC until such time as TCC agrees to terminate U.S.-originating traffic at some rate other than the rate imposed on TCC by the Tonga Government as a matter of law.<sup>15</sup> Whatever authority the FCC may have to prescribe the termination rates to be paid by U.S. carriers for purchasing termination services in a foreign country, the FCC does not have authority to prescribe such rates in a manner that creates a direct conflict with the laws of the foreign country. Consistent with

<sup>13</sup> TCC doubts that there is any valid justification for charging US\$0.21/minute to terminate TCC's international telephone traffic in these NPAs, none of which have terminating access rates that are more than a small fraction of AT&T's terminating rate. As such, AT&T's termination rate is plainly unlawful under Sections 201(b) and 202(a) of the Communications Act.

<sup>14</sup> TCC believes that AT&T's collection rates for calls to Tonga also do not reflect AT&T's true costs of providing service. Before TCC blocked AT&T's circuits, AT&T was paying only US\$0.09/minute to terminate traffic in Tonga, yet AT&T's published consumer landline rates for service to Tonga ranged from \$1.57/minute (e.g., AT&T Worldwide Value Calling) to \$3.22/minute (AT&T Worldwide Occasional Calling). See <https://www.shop.att.com/internationalplancomparison.jsp> (last visited Feb. 16, 2009). This strongly suggests that AT&T has failed to pass the reductions in settlement rates that TCC has agreed to over the years through to AT&T's customers. The FCC would be justified in investigating these excessive collection rates to determine whether they comply with Sections 201(b) and 202(a) of the Communications Act.

<sup>15</sup> Petition at 2, 4, 9.

the rules of statutory construction, courts have repeatedly refused to construe U.S. laws so as to bring them in conflict with foreign laws.<sup>16</sup> In considering the scope of the FCC's authority regarding its benchmark settlement rates, it is noteworthy that the D.C. Circuit Court declined to uphold the FCC's authority to issue an order specifying the rate that a U.S. carrier may pay a foreign carrier for the termination of U.S.-originating traffic in situations where the FCC's order would create a direct conflict with the duly enacted laws and regulations of the foreign country.<sup>17</sup> If the Commission questions the validity of the new termination rate established by the Communications Minister or believes that Tonga has acted contrary to its obligations under the WTO Basic Telecommunications Agreement or other international treaty, the U.S. Government should raise these concerns directly with the Government of Tonga and if necessary, invoke multilateral dispute resolution mechanisms. This is the same course of action the U.S. Government has taken vis-à-vis Jamaica in response to the Jamaican Government's decision to impose a universal service surcharge on all inbound terminating international traffic.<sup>18</sup>

If AT&T is unhappy with the new inbound termination rate mandated by the Communications Minister, then one option for AT&T is to terminate its direct relations with TCC and Digicel and cease sending traffic directly to Tonga. AT&T is required to comply with the inbound termination rate mandated by the Communications Minister only if it chooses to send traffic directly to Tonga. As the FCC noted in arguments before the D.C. Circuit in the

<sup>16</sup> See *Ali v. Ashcroft*, 346 F.3d 873, 885 (9<sup>th</sup> Cir. 2003); *Amerada Hess Shipping Corp. v. Argentine Republic*, 830 F.2d 421, 426 (2<sup>nd</sup> Cir. 1987); *CFTC v. Nahas*, 738 F.2d 487 493 (D.C. Cir. 1984).

<sup>17</sup> See *Cable & Wireless plc v. FCC*, 166 F.3d 1224, 1230 (D.C. Cir. 1999) ("we see no need to decide" whether the FCC can adopt a benchmarks policy which "subjects foreign carriers to conflicting obligations").

<sup>18</sup> See Office of the United States Trade Representative, Results of the 2008 Section 1377 Review of Telecommunications Trade Agreements, available at [http://www.ustr.gov/assets/Trade\\_Sectors/Telecom-E-commerce/Section\\_1377/asset\\_upload\\_file386\\_14697.pdf](http://www.ustr.gov/assets/Trade_Sectors/Telecom-E-commerce/Section_1377/asset_upload_file386_14697.pdf) (last visited Feb. 18, 2009).

appeal of the *Benchmarks Order*, if the benchmarks limits are not acceptable to a foreign carrier, then the foreign carrier has the right to decline to accept telephone calls from the U.S. and be free of the Commission entirely.<sup>19</sup> TCC believes that a similar approach applies here. Certainly, it is TCC's desire that this dispute with AT&T be resolved in an amicable fashion that permits both carriers to comply with the laws and regulations of their respective countries and resume the direct exchange of international telephone traffic. But if AT&T cannot accept the Communications Minister's order regarding termination rates in Tonga, then AT&T should terminate its direct relations with the Tonga carriers, free itself from the mandates of the Communications Minister, and terminate its traffic in Tonga through other means.

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<sup>19</sup> *Cable & Wireless plc v. FCC*, No. 97-1612, Brief for Respondents at 27 (May 6, 1998).

VI. Conclusion

For these reasons, the Commission should deny the request of AT&T for a settlements stop payment order on the U.S.-Tonga route.

Respectfully Submitted,

**TONGA COMMUNICATIONS  
CORPORATION**

By: \_\_\_\_\_

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Its Attorneys

February 19, 2009

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Petition of AT&amp;T Inc.</b>	)	<b>IB Docket No. 09-10</b>
<b>For Settlements Stop Payment Order</b>	)	
<b>on the U.S.-Tonga Route</b>	)	

**DECLARATION OF TIMOTE KATOANGA**

1. My name is Timote Katoanga, and I am the Managing Director of Tonga Communications Corporation ("TCC"). I have been the Managing Director of TCC since December 2007. As Managing Director, I am responsible for the day-to-day operations of TCC. I oversee TCC's relationships with foreign carriers and compliance with legal requirements. I am also a member of the Board of Directors of TCC.

2. TCC is a telecommunications carrier providing voice, data, Internet, and cellular services in the Kingdom of Tonga. TCC was established in 2000 as the successor in interest to the Tonga Telecommunications Commission (for domestic services) and Cable & Wireless Tonga (for international services). TCC is a public enterprise that is wholly-owned by the Government of Tonga and reports to the Ministry of Public Enterprises. However, since 2006, there has been only one (1) minister or government official among the seven (7) directors on the TCC Board of Directors. As of January 2009, no minister or government official sits on TCC's Board.

3. Pursuant to the Communications Act 2000, TCC's provision of service is regulated by the Minister responsible for Communications ("Communications Minister"). TCC

provides its services pursuant to an individual telecommunications license issued by the Communications Minister in accordance with Section 20 of the Communications Act 2000. TCC is required by the terms of its telecommunications license to comply with the Communications Minister's rules and regulations. Section 34 of TCC's license provides that "the Licensee shall comply with the provisions of the Communications Act 2000 and other laws of the Kingdom and with any subordinate legislation and regulations made thereunder." TCC can lose its license or suffer sanctions if it fails to comply with the Communications Minister's rules and regulations

4. Digicel is also licensed to provide telecommunications service in Tonga. Digicel operates a GSM cellular network to provide international and domestic telecommunications services, Internet access, and broadcast services.

5. In August 2008, the Communications Minister – TCC's regulator – issued a ruling that raised the minimum termination rate for all international telephone traffic terminating in Tonga to US\$0.30/minute effective no later than September 1, 2008. The order by its terms applies to all inbound telephone traffic -- not just traffic originating in the U.S. -- whether the traffic is terminated by TCC or Digicel.

6. At the time the order was issued, TCC had not sought a rate increase from AT&T or any other U.S. carrier in over a year, and there was no ongoing dispute between TCC and AT&T or any other U.S. carrier that the Communications Minister was attempting to resolve. TCC was not attempting to play AT&T against Verizon or another U.S. carrier in an accounting rate negotiation in order to secure a higher termination rate. Indeed, TCC was not even in commercial negotiations with AT&T over the level of the termination rate. Rather, in asking AT&T to pay US\$0.30/minute for terminating AT&T's telephone traffic in Tonga, TCC was



merely attempting to comply with the rules and regulations imposed on it by its regulator, the Communications Minister. TCC does not have the authority or ability to ignore the mandated termination rate or change it.

7. TCC did not attempt to negotiate higher termination rates with AT&T and then block AT&T's circuits when AT&T would not comply with TCC's demands. Rather, TCC blocked AT&T's circuits because TCC had no reasonable assurance of payment (let alone payment at the legally mandated termination rate) in light of AT&T's express refusal to comply with the Communications Minister's order. Furthermore, TCC was concerned that were it to continue terminating AT&T's traffic at the previously agreed termination rate in violation of Tonga law, the result would be to create a mechanism for refile that would undercut the termination rate mandated by the Communications Minister and agreed by all other foreign carriers terminating traffic in Tonga. Only AT&T and Verizon, the two U.S. carriers with whom TCC has maintained direct relations, have voiced any objections to the new rate. At the point at which TCC blocked AT&T's circuits, TCC's agreement with AT&T for the termination of traffic had already expired.

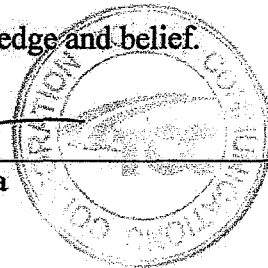
8. Tonga's inbound termination rate of US\$0.30/minute is among the lowest rates charged by Pacific island countries. I have provided the inbound termination rates for Western Samoa, Niue, Papa New Guinea, and Wallis & Futuna that appear in the confidential version of TCC's Opposition. The fact that Pacific island countries charge termination rates that are higher than the FCC's benchmark rates does not necessarily mean that these rates are not cost-based. Carriers in developing countries such as Tonga have higher costs due to many factors, including adverse terrain and climatic conditions, smaller and less dense populations, less efficient and

lower density network configurations, higher equipment purchase, installation and maintenance costs, and fewer economies of scale/scope.

9. The rate that the Communications Minister has mandated for inbound termination is not significantly higher than the termination rate that AT&T is charging TCC for termination in certain parts of the U.S. I have provided the rate that AT&T charges TCC to terminate TCC's traffic in high cost NPAs and the description of those NPAs that appear in the confidential version of TCC's Opposition.

The foregoing statements are true to the best of my knowledge and belief.

  
\_\_\_\_\_  
Timote Katoanga



February 19, 2009

**Certificate of Service**

The undersigned counsel hereby certifies that the foregoing "Opposition of Tonga Communications Corporation" (public version) in IB Docket No. 09-10 was served via email on February 19, 2009 on the following individuals:

James Ball  
Chief, Policy Division  
International Bureau  
Federal Communications Commission  
[James.ball@fcc.gov](mailto:James.ball@fcc.gov)

David Krech  
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